

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

WILLIAM AYERS,

Plaintiff,

v.

C. P. BOURG, INC.

Defendant.

DOCKET NO. 04-cv-10137-FDS

MOTION TO COMPEL

The defendant seeks to deprive the plaintiff of probative information, including conversations, relating to the decision not to pay him money owed in commissions and the decision to terminate him. To do so, it claims an attorney-client privilege. William Hagan served as a vice president, performing most human resource functions and, at times, as counsel. Because Mr. Hagan performed in his human resource business capacity when consulting about the plaintiff, the defendant's claim of privilege is unavailing. The Court should thus order the previous deponents and Mr. Hagan to testify about the circumstances surrounding the decision not to pay the plaintiff money owed in commissions and plaintiff's termination, including the facts surrounding the claimed reduction in force.

Even if the Court were to find that the information is privileged, the Court should find that the privilege has been waived and order discovery of the information sought by the plaintiff.

Respectfully submitted,
PLAINTIFF
By his Attorney,

Dated: May 19, 2005

/s/ Suzanne Garrow
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CERTIFICATION PURSUANT TO LOCAL RULE 7.1(A)(2)

I certify that the parties have conferred and have attempted in good faith to resolve or narrow the issues raised in this motion and have not been able to reach agreement on the issues.

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the above was served on the attorneys of record for the defendant via electronic mail on May 19, 2005.

/s/ Suzanne Garrow